

Making Queensland Safer Bill 2024

Submission No: 166
Submitted by: Prisoners' Legal Service
Publication:
Attachments: See attachment
Submitter Comments:



3 December 2024

Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: JICSC@parliament.qld.gov.au

Dear Committee

Inquiry into the Making Queensland Safer Bill 2024

1. Thank you for the opportunity to provide feedback about the Making Queensland Safer Bill 2024 (the **Bill**).
2. Prisoners' Legal Service (**PLS**) is a community legal centre that has operated in Queensland for over 30 years. We provide legal assistance to people in prison about matters arising from imprisonment. Our purpose is to promote access to justice for people who are vulnerable in prison.
3. PLS acknowledges with support the submissions made by Youth Advocacy Centre, YFS and Queensland Advocacy for Inclusion and the concerns raised therein with respect to provisions of the Bill that seek to override the *Human Rights Act 2019*, remove the principle of detention as a last resort from the *Youth Justice Act 1992* (the **YJ Act**), and to introduce "Adult Crime, Adult Time" measures for children.
4. This submission focuses on proposed amendments to the YJ Act regarding the transfer of young people to adult corrective services facilities based on our experience representing young people who have received a prison transfer direction.
5. We are concerned the Bill removes existing safeguards which can prevent unnecessary transfers of young people to adult correctional centres in the lead up to their release from custody. These safeguards are necessary to enhance the quality and accuracy of information being considered for prison transfers, which impact both individual young people and community safety as a whole.

Proposed replacement of Part 8, Division 2A of the YJ Act

6. Clause 33 of the Bill proposes to wholly replace Part 8, division 2A of the YJ Act. The existing division of the YJ Act sets out a process that enables the chief executive to consider the appropriateness of transfer to an adult prison for a young person who has turned 18 years of age whilst serving a period of detention or whilst on remand, or who is 18 years old when commencing detention.

7. The current Division 2A of the YJ Act includes a series of measures that are intended to afford procedural fairness for a person who may be transferred from the youth justice system into an adult correctional facility. This includes a discretionary power afforded to the chief executive to consider the appropriateness of a transfer in all of the circumstances, such as having regard to any safety concerns with transferring a particular individual to an adult facility.
8. The measures include the provision of a transfer notice to a young person setting out details of the proposed transfer, including outlining any interventionist, rehabilitation or similar activities relevant to the person that are available at the nominated corrective services facility. The legislation also requires the chief executive to facilitate a consultation with a lawyer and prevents transfers from taking place until 10 business days after that consultation has occurred. In practice, this ensures that lawyers can assist young people with seeking reviews of transfer decisions in appropriate cases.
9. PLS is concerned with the proposal to replace Division 2A of the YJ Act as set out in clause 33 of the Bill. Measures which are intended to provide procedural fairness to a young person also have the effect of assisting the chief executive in making a decision that is appropriate having regard to the full circumstances of the individual, and any associated operational or safety impacts that may result from a transfer.
10. We acknowledge that in cases where a young person has received a lengthy custodial sentence, it may be inevitable that transfer to an adult prison will occur at some stage. However, there may be circumstances in which delaying a transfer is the appropriate course, including in cases where doing so is in the interests of justice and having had regard to the vulnerability of the young person.
11. These issues are demonstrated in the following case example where PLS provided legal representation to a young person with an intellectual impairment:

William (not his real name) is a young Aboriginal person with a cognitive impairment that significantly impacts his functioning. Though he recently turned 18 years of age, he demonstrates the capacity and functioning capabilities of a much younger child.*

William received a direction to transfer him from a youth detention centre to an adult prison. Relying on the process set out Division 2A of the YJ Act, PLS assisted William by providing the chief executive with information relevant to confirming or revoking the transfer decision.

PLS made submissions that William had only a short period of detention left to serve and keeping him in youth detention would enhance his prospects of successful community reintegration as it would enable him to receive continuity in his supports. PLS' submissions also emphasised the extent and impact of William's cognitive impairments, which would place him at significant risk in an adult prison environment.

PLS was able to demonstrate that the interests of justice and community safety were better served by delaying a transfer so that the essential services that William was engaged with in the youth system were not disrupted, and to facilitate William's transition back into the community with the support of Youth Justice's supervision in place.

12. We note proposed section 276D of the Bill, which allows the chief executive to direct that a person who turns 18 years of age while being held on remand or whilst serving a period of detention, be held or detained in a detention centre rather than in a correctional services facility.

13. We submit that the retention of the aforementioned measures currently in place under Division 2A of the YJ Act will allow a young person to provide important information to the chief executive, and in doing so, will support the chief executive tasked with exercising and implementing transfer decisions.

Vulnerability of people in the criminal justice system

14. It is important to recognise the characteristics of children and young people in youth detention who will be impacted by any transfer decisions made.

15. People with disability are chronically over-represented in the criminal justice system.¹ The prison system is not well equipped to meet disability-related needs and incarceration is a risk factor for elevating behaviours associated with certain disabilities.² It is also documented that people with disabilities who are in prison in Queensland, experience harsher conditions and higher levels of violence and abuse compared to others.³

16. First Nations people are also over-represented in prison, making up 37.2% of the Queensland prison population.⁴ First Nations people have higher incidence of disability which compounds the disadvantage they face in prison.⁵

17. The majority of young people that are exposed to the criminal justice system have complex characteristics and needs. Data suggests that at least 44% of young people in the youth justice system have one or more disabilities, with similar rates applying to young people who have one or more mental health disorders and/or behavioural disorders.⁶ In PLS' experience, the percentage of persons in custody with one or more identified or suspected disability, mental health or behavioural disorder is significantly higher.

18. A significant risk of transferring young persons out of detention centres and into adult prisons is the associated loss of support and rehabilitation services provided to young people with complex needs in youth detention. In our experience, adult prisons cannot provide equivalent services and support to people with disability due to the high prison population and limited staff to prisoner ratio. The disruption of services in youth detention will have negative implications for young people seeking rehabilitation prior to their release back into the community.

19. The Bill cannot achieve its stated purpose of promoting and protecting community safety whilst reducing access to essential supports and programs for young persons who are transferred away from the services that exist in the youth justice system.

Recommendations

20. We urge the government to reconsider the provisions of the Bill to ensure that policy objectives will be met by measures that are evidence based.

¹ See Australian Institute of Health and Welfare, (2019) 'The health of Australia's prisoners 2018', 77,78,106,107.

² Rowe, et al. (2017) 'The provision of services under the NDIS for people with disabilities who are in contact with the criminal justice system' Submission to the Joint Standing Committee on the NDIS, 13.

³ Human Rights Watch, (2018) 'I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia'.

⁴ Australian Bureau of Statistics, 'Prisoners in Australia' *Prisoners in Australia* (Web Page, 24 January 2024) <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#data-downloads>.

⁵ Ibid, 21.

⁶ See the State of Queensland (Department of Youth Justice) 'A Safer Queensland – Queensland Youth Justice Strategy 2024-2028', 11.

21. We recommend that the measures currently set out in Division 2A of the YJ Act are retained.

22. Thank you for providing an opportunity for PLS to make submissions on the Bill. PLS would be pleased to further assist the Committee with its inquiry.

Yours faithfully

A black rectangular redaction box covering the signature of Helen Blaber.

Helen Blaber
Director/Principal Solicitor

PLS gratefully acknowledges Vanessa Krulin for her assistance in the preparation of these submissions.